




Docket 38-21(52258)B

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re the Application of: Carl Frederick Behr et al

Serial No: 09/872,051 Group Art Unit: 1638
Filed: June 1, 2002 Examiner: David H. Kruse

For: CORN EVENT PV-ZMGT32(nk603) AND COMPOSITIONS
AND METHODS FOR DETECTION THEREOF

Confirmation No.: 3101

Assistant Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO ELECTION/RESTRICTION REQUIREMENT UNDER 35 U.S.C. 1.21

This paper is filed in response to the Office communication dated September 23, 2002. It is respectfully requested that the election below be entered with traverse and that the application be examined on the merits.

Remarks

In the action dated September 23, 2002, the U.S. Patent and Trademark Office required restriction under 35 U.S.C. 121 from among the following groups:

- I. Claims 1-5, and 15, drawn to a DNA construct, a plant comprising said construct and a method of making said plant, classified in class 800, subclass 300.1.

- II. Claim 6, drawn to a DNA construct comprising *Zea mays* genomic DNA, construct vector DNA and rice actin 1 promoter DNA (SEQ ID NO:7), classified in class 435, subclass 320.1.
- III. Claim 6, drawn to a DNA construct comprising *A. tumefaciens* nos 3' terminator DNA, construct vector DNA, *Zea mays* plastid genes rps11 and rpoA, and *Zea mays* genomic DNA (SEQ ID NO:8), classified in class 435, subclass 320.1.
- IV. Claims 7, 9, 11, 13 and 16, drawn to PCR primer DNA molecules and a method of detecting the presence of a DNA molecule in a corn plant using said method, directed to SEQ ID NOs: 7, 9 and 10, classified in class 435, subclass 6.
- V. Claims 7, 8, 11, 13 and 16, drawn to PCR primer DNA molecules and a method of detecting the presence of a DNA molecule in a corn plant using said method, directed to SEQ ID NOs: 8, 11 and 12, classified in class 435, subclass 6.
- VI. Claim 10, drawn to a corn plant that produces an amplicon using SEQ ID NOs:9 and 10, classified in class 800, subclass 300.1.
- VII. Claim 10, drawn to a corn plant that produces an amplicon using SEQ ID NOs:11 and 12, classified in class 800, subclass 300.1.
- VIII. Claim 12, drawn to a method of detecting the presence of a DNA molecule comprising SEQ ID NO:7, comprising SEQ ID NOs: 9 and 10, classified in class 435, subclass 6.
- IX. Claim 12, drawn to a method of detecting the presence of a DNA molecule comprising SEQ ID NO:8, comprising SEQ ID NOs: 11 and 12, classified in class 435, subclass 6.
- X. Claim 14, drawn to a method of breeding corn plant using a molecular marker directed to SEQ ID NO:7, comprising markers designated as SEQ ID NOs: 9 and 10, classified in class 800, subclass 267.
- XI. Claim 14, drawn to a method of breeding corn plant using a molecular marker directed to SEQ ID NO:8, comprising markers designated as SEQ ID NOs: 11 and 12, classified in class 800, subclass 267.

Applicants elect Group I consisting of Claims 1-5 and 15 with traverse and respectfully request that the application be examined on the merits. Applicants believe that it would not create an undue burden on the Examiner to conduct a search encompassing all of the claims. Further, Applicants reserve the right to file divisional applications to further prosecute non-elected groups.

Applicants elect Group I and respectfully traverse the Examiner's restriction requirement for the other claims of the invention. The invention as described is directed to a DNA construct and a corn plant containing the DNA construct. The corn plant PV-ZMGT32(nk603) described in claim 7, 8, and 16 is identical to the corn ATCC seed deposit PTA-2478. The remaining claims are directed to DNA molecules described in SEQ ID NO:7, 8, 9, 10, 10, 11 and 12 are specifically contained in corn plant PV-ZMGT32(nk603) and to methods for detecting these DNA molecules.

DNA molecules that are the objects of group II and III (SEQ ID NO 7 and SEQ ID NO:8, respectively) are specifically found in the corn plant of claim 5 of group I and, have as a portion of their DNA sequence a portion of the DNA construct of claim 1.

Group IV and V are again drawn to DNA molecules that function as primers or probes that are diagnostic for the corn plant of claim 5 of group I. These DNA molecules are related to SEQ ID NO:7 and SEQ ID NO:8 of group II and III.

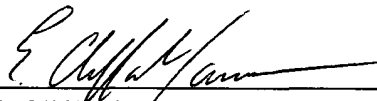
Group VI and Group VII is drawn to a corn plant in which an amplicon can be produced that contains a DNA molecule selected from the group consisting of SEQ ID NO:9, 10, 11, and 12; only the corn plant PTA-2478 of Group I contains these DNA molecules.

Group VIII and Group IX is directed to a method of detecting a DNA molecule that is SEQ ID NO:7 or SEQ ID NO:8, which are the same DNA molecules of Group II and Group III, and where DNA molecules used are probes in the method are the same as those identified in claim 13.

In the method described in claim 14, that makes up Group X and XI, any one of the listed SEQ ID Nos can be used in the breeding method to identify the glyphosate tolerant trait and is diagnostic for the corn plant PV-ZMGT32 (nk603).

Should any questions arise or if Applicants or Applicants' attorney can facilitate the examination of this application, it is respectfully requested that the PTO contact the undersigned attorney.

Respectfully submitted,



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